

HONORABLE TIFFANY M. CARTWRIGHT

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
TACOMA

BRAD ERHART,

Plaintiff,

v.

TRINET HR XI, INC., SWITCHBOARD  
TECHNOLOGY LABS, INC. AND  
HARTFORD LIFE AND ACCIDENT  
INSURANCE COMPANY, INC.,

Defendants.

Case No. 3:23-cv-05882-TMC

JOINT STATUS REPORT & DISCOVERY  
PLAN

1 The parties jointly represent that met on the 15th day of April, 2024, pursuant to  
2 FRCP & LCR 26(f), and that they conferred as required. Notwithstanding the contentions  
3 raised by Plaintiff below, the parties submit this joint status report and discovery plan per

1 FRCP 26 and the court's order. Plaintiff respectfully requests a scheduling conference in this  
2 matter prior to a scheduling order for the reasons listed below and as noted under (16).

3 **1. Statement of the nature and complexity of the case**

4 Plaintiff's statement: Plaintiff presents numerous claims against Defendants involving  
5 disability discrimination in employment, termination due to disability, failure to engage in a  
6 reasonable accommodations process, conspiracy to deny civil rights, fraudulent inducement,  
7 breach of contract, and claims involving ERISA. This is a complex case and is expected to  
8 evolve during discovery, with the ERISA claims potentially impacting all plan members.

9 Plaintiff alleges TriNet HR XI, Inc. ("TriNet") conspired with Switchboard  
10 Technology Labs, Inc. ("Switchboard") to obfuscate TriNet HR XI, Inc's legal duties, and that  
11 they provided false statements when stating that TriNet had no obligations to engage in a  
12 reasonable accommodations process. Instead he claims they opted to discriminate against him  
13 by way of Switchboard, and ultimately terminated him without cause because of his disability.

14 Plaintiff states that benefits under the single-employer TriNet HR XI, Inc. Employee  
15 Benefit Plan were presented as part of the employment offer, and that upon starting  
16 employment that he was notified and given access to enroll in those benefits, including  
17 disability coverage, and that premiums for his elected benefits were later deducted from his  
18 wages. Plaintiff asserts before termination, he requested ERISA benefit documents from  
19 TriNet HR XI, Inc. and filed a claim for disability benefits with Hartford Life and Accident  
20 Insurance Company, Inc. ("Hartford").

21 He further alleges Switchboard sent Plaintiff a Separation and General Release  
22 Agreement, and that TriNet and Switchboard continued to conspire to fraudulently induce  
23 Plaintiff into signing the agreement while preying on the distress and trauma that they caused

1 him. He further states Switchboard demanded that Plaintiff sign it within a time that was  
2 contrary to the terms in the agreement, thus also having Plaintiff sign it while under duress.

3 Plaintiff further alleges that during disability claims handling he found the benefit plan  
4 documents required TriNet HR XI, Inc. to be the single employer that he worked for full-time.  
5 Additionally, upon reviewing his wages, taxes, and other employment documents, and gaining  
6 better awareness about ERISA, he realized that TriNet HR XI, Inc. was required to have  
7 engaged in a reasonable accommodations process. Plaintiff filed a complaint against TriNet  
8 HR XI, Inc. with the Washington State Human Rights Commission (“WSHRC”) for disability  
9 discrimination at that time.

10 He alleges that TriNet continued conspiring with Switchboard to interfere with and  
11 deny him of his civil rights by providing false statements to the WSHRC government  
12 investigator acting in a dual-agency capacity on behalf of the U.S. Equal Employment  
13 Opportunity Commission (“EEOC”) and that their actions did prevent the investigator from  
14 being able to handle the claim. He claims the investigator instead recommended he request a  
15 Right to Sue Letter and pursue the matter in court, which Plaintiff did acquire.

16 Lastly, his claims against TriNet and Hartford involve multiple breaches of fiduciary  
17 duty under ERISA and failing to provide required ERISA documents. These issues are  
18 evolving as TriNet HR XI, Inc. still denies ever being Plaintiff’s employer in their answer  
19 (Dkt. 23 pg. 3 & 7) despite being an explicit requirement of the disability plans (Dkt. 22, pgs.  
20 38-42) and as required per ERISA.

21 This case is brought under the Americans with Disabilities Act (42 U.S.C § 12101 et  
22 seq.), 42 U.S. Code § 1985, the Employee Retirement Income Security Act (29 U.S.C. § 1001

1 et seq.), and Washington contract law. Plaintiff reserves the right to amend as justice  
2 demands.

3 Switchboard Technology Labs, Inc.’s Separate Statement: Defendant Switchboard  
4 Technology Labs, Inc. (“STL”) generally denies the allegations of the Complaint and avers  
5 that it justifiably terminated Mr. Erhart’s employment and that, subsequent to termination, Mr.  
6 Erhart signed a separation and release of claims agreement in exchange for receipt of  
7 consideration, which consideration he has not returned.

8 Hartford Life and Accident Insurance Company, Inc.’s Separate Statement: Defendant  
9 Hartford Life and Accident Insurance Company, Inc. (“Hartford Life”) agrees that Mr.  
10 Erhart’s claims against Hartford Life are governed by ERISA, but generally denies Mr.  
11 Erhart’s claims, and specifically denies that it breached any fiduciary duties owed to Mr.  
12 Erhart or failed to follow any ERISA regulations or plan terms or procedures.

13 TriNet HR XI, Inc.’s Separate Statement: Defendant Trinet HR XI, Inc. (“TriNet”)  
14 generally denies the allegations of the Complaint and maintains that it was never Mr. Erhart’s  
15 employer, never discriminated against him, and never violated any right of his under ERISA.  
16 TriNet further avers that Mr. Erhart signed a release of claims agreement with STL that listed  
17 TriNet as an intended beneficiary and thus any claims by Mr. Erhart against TriNet were  
18 further extinguished to the extent lawful by this agreement. Lastly, TriNet maintains that Mr.  
19 Erhart’s reliance on statements by STL and TriNet to the Washington Human Rights  
20 Commission violates Washington’s amended Anti-SLAPP Act.

**2. Proposed deadline for the joining of additional parties**

The Defendants propose July 15, 2024 as the deadline for joining additional parties. Plaintiff requests a scheduling conference to address underlying disputes before being able to adequately estimate deadlines at this time. Furthermore, the service sent by Plaintiff as required by 29 U.S.C. § 1132(h) may allow the U.S. Acting Secretary of Labor or the U.S. Secretary of the Treasury to argue for intervention at a later date.

**3. Whether parties consent to assignment of this case to a full time United States Magistrate Judge**

No, the parties do not agree to assign the case to a Magistrate Judge.

**4. Proposed discovery plan per Fed. R. Civ. P. 26(f)(3)**

**A. Initial disclosures**

All the parties exchanged initial disclosures on April 29, 2024, however there exists the following dispute below.

Plaintiff's statement: Plaintiff alleges that Hartford's Rule 26 Initial Disclosures were inadequate as they merely rehashed Hartford's objections to discovery and stated the information could be found in the administrative record. Hartford has not provided any basis to support their claim(s) that the plans are ERISA plans at this time (Docket 19 Pg. 4(12)) and TriNet argues they were never the employer (Dkt. 23 pg. 3 & 7).

Hartford Life's statement: Hartford Life contends that, as the claims against it are ERISA claims involving review of the administrative record, it is exempt from the initial disclosure requirements of Rule 26(a)(1)(B)(i). In an abundance of caution, on April 29, 2024, Hartford Life provided the parties with Rule 26 Initial Disclosures in compliance with any obligations that it may have under Rule 26(a)(1)(A)(i)-(iv).

**B. Subjects, timing, and potential phasing of discovery**

Plaintiff intends to conduct discovery regarding the allegations in Plaintiff's Complaint and Defendants' affirmative defenses. Plaintiff sees a need for phased discovery to address Hartford's objections, TriNet's answer, and Switchboard's intended discovery.

Defendant STL intends to conduct discovery regarding the allegations in Plaintiff's Complaint, and matters related to Plaintiff, Plaintiff's prior work history and related matters.

Defendant Hartford Life contends that, as the claims against it are governed by ERISA and involve an administrative review of the record, no discovery is necessary and no discovery should be permitted.

Defendant TriNet intends to conduct discovery regarding the allegations in Plaintiff's Complaint, and matters related to Plaintiff, Plaintiff's prior work history, and related matters. TriNet further agrees that to the extent Plaintiff brings any ERISA claim against it, that discovery on such claim is neither necessary nor permissible.

**C. Electronically stored information**

The parties intend to enter into a modified version of the Court's ESI protocol, which shall be submitted for the Court's approval once agreement on its terms are reached.

**D. Privilege issues**

The parties agree to redact documents that may be partially privileged.

**E. Proposed limitations on discovery**

Plaintiff intends to limit discovery by Switchboard for claims that are not alleged against them, and for discovery by TriNet for any defense waived by their own admissions.

Defendant Hartford Life contends that no discovery is necessary or warranted on the claims against it.

1        Defendant TriNet that no discovery is necessary or warranted on Plaintiff's ERISA  
 2 claim(s) against it.

3        **F.        The need for any discovery related orders**

4        Plaintiff seeks to limit or eliminate the need for discovery related orders at this time by  
 5 requesting a scheduling conference in anticipation that the court may be able to intervene in  
 6 resolving discovery disputes.

7        However, the parties agree to work together cooperatively on any discovery-related  
 8 disputes. One or more of the parties may ask the Court for a discovery-related order if they  
 9 are unable to confer and agree, and the parties agree to use the procedures set forth in Section  
 10 III of the Court's Order Regarding Initial Disclosures, Joint Status Report, Discovery,  
 11 Depositions and Early Settlement (Docket No. 13).

12        **5.        The parties' views, proposals, and agreements, per Local Civil Rule 26(f)(1)**

13        **A.        Prompt case resolution**

14        The parties have discussed and agree to continue exploring options for prompt case  
 15 resolution.

16        **B.        Alternative dispute resolution**

17        The parties have discussed the possibility and advisability of participating in early  
 18 mediation, but no decision has been reached at this time. Plaintiff posits given the numerous  
 19 disputes, that early mediation may be beneficial.

20        **C.        Related cases**

21        The parties are not aware of any related cases at this time.

**D. Discovery management**

The parties are in agreement to confer with each other regarding the nature and type of ESI to be produced, including the form of production and to do so promptly to ensure production of ESI within the time allowed under the federal rules of civil procedure and local rules. The parties are negotiating a protocol for discovery of ESI.

**E. Anticipated discovery sought**

Plaintiff intends to obtain discovery regarding the allegations in his complaint, Defendant's agreements, relationships, compensation, benefits, business activities, and communications.

Defendant STL intends to obtain discovery regarding Plaintiff, Plaintiff's past employment and Plaintiff's claims and allegations contained in the Complaint.

Defendant Hartford Life contends that, as the claims against it are governed by ERISA and involve an administrative review of the record, no discovery is necessary and no discovery should be permitted.

Defendant TriNet intends to obtain discovery regarding Plaintiff, Plaintiff's past employment and Plaintiff's claims and allegations contained in the complaint.

**F. Phasing motions.**

Plaintiff intends to file a partial motion for summary judgment seeking a determination that TriNet qualifies as an "employer" under the Americans with Disabilities Act (ADA). This issue is central to the case. An early resolution by the court could streamline discovery and facilitate settlement discussions.

TriNet will oppose any such motion.



**G. Preservation of discoverable information**

The parties each state that they are preserving discoverable information, and spoliation notices have been sent previously by Plaintiff. However, given Plaintiff's pro se status, the Defendants did not go into any depth regarding how they are preserving discoverable information or where such records are being stored and kept.

**H. Privilege issues**

The parties agree to redact documents that may be partially privileged.

**I. Model Protocol for Discovery of ESI**

The parties are negotiating a protocol for discovery of ESI that is based upon the Court's Model Protocol.

**J. Alternatives to Model Protocol**

The parties are negotiating a protocol for discovery of ESI that is based upon the Court's Model Protocol.

**6. The date by which discovery can be completed**

Defendants propose a discovery deadline that aligns with the attached hereto draft case schedule based on the Court's form case schedule. However, given the numerous disputes and ongoing activities, Plaintiff requests a scheduling conference to help make a determination.

**7. Whether the case should be bifurcated by trying the liability issues before the damages issues, or bifurcated in any other way**

Plaintiff contends that it would be beneficial to try liability issues first, before damages, and is open to exploring and implementing other suggestions by the court to aid in efficiency.

1 Defendants' Hartford Life and TriNet contend that bifurcation of the ERISA claims  
 2 from the other claims in this matter may be appropriate given their position that the ERISA  
 3 claims do not warrant any discovery and are not subject to a jury trial.

4 **8. Whether the pretrial statements and pretrial order called for by Local Civil**  
 5 **Rules 16(e), (h), (i), and (k), and 16.1 should be dispensed with in whole or in part for**  
 6 **the sake of economy**

7 The parties are in agreement that they do not believe the pretrial statements and  
 8 pretrial order should be dispensed in whole or in part.

9 **9. Any other suggestions for shortening or simplifying the case**

10 Plaintiff has requested a status conference to aid in resolving disputes under Rule 16,  
 11 and additionally believes that phasing motions and discovery, as well as early motions for  
 12 partial summary judgment, as appropriate, will help expedite the issues in this case.

13 **10. The date the case will be ready for trial**

14 Defendants propose a trial date of September 1, 2025 and have included a proposed  
 15 case schedule hereto based on the Court's form case schedule.

16 Plaintiff requests a scheduling conference to discuss contentions that are believed to  
 17 impact the timelines, depending on the extent of motions to be filed, and likelihood of phasing  
 18 producing additional evidence necessitating amendments.

19 **11. Whether the trial will be jury or non-jury**

20 Plaintiff's position: Plaintiff has requested trial by jury. In regards to Hartford's  
 21 position below that he is not entitled to a jury trial for breach of fiduciary claims because of  
 22 ERISA, he argues that Hartford has not even provided a basis for claiming the plan is an  
 23 ERISA plan at this time (Docket 19 Pg. 4(12)). He argues that TriNet's answer (Dkt. 23 pg. 3

1 & 7) states they were never the employer and Hartford's answer (Dkt. 19 pg. 4(12)) shows  
 2 Hartford's refusal to imply it, both of which contradict any ERISA designation and the  
 3 explicit eligibility requirements of the Hartford plans (Dkt. 22, pgs. 38-42).

4 Further, he argues that the cases they cite are unrelated to breach of fiduciary claims  
 5 under 29 U.S.C. § 1132(a)(2) & (3), that he has alleged systematic wrongdoing, and that any  
 6 disputes regarding a jury trial should be discussed at a scheduling conference before the  
 7 Court.

8 Defendant Hartford Life's position: Defendant Hartford Life contends that Plaintiff is  
 9 not entitled to a jury trial on the claims against it, which are all governed by ERISA. *Thomas*  
 10 *v. Oregon Fruit Prods. Co.*, 228 F.3d 991 (9th Cir. 2000); *Nielsen v. UNUM Life Ins. Co. of*  
 11 *Am.*, 58 F. Supp. 3d 1152 (W.D. Wash. 2014).

12 Defendant TriNet's position: Defendant TriNet contends that Plaintiff is not entitled to  
 13 a jury trial on his ERISA claims. *Thomas v. Oregon Fruit Prods. Co.*, 228 F.3d 991 (9th Cir.  
 14 2000); *Nielsen v. UNUM Life Ins. Co. of Am.*, 58 F. Supp. 3d 1152 (W.D. Wash. 2014).

15 12. **The number of trial days required**

16 Defendants' Switchboard Labs and TriNet believe that the trial will require eight court  
 17 days.

18 Defendant Hartford Life believes that a bench trial on the ERISA claim would only  
 19 require one day.

20 Plaintiff believes the dispute regarding Hartford Life's objections should first try to be  
 21 addressed, and any other disputes, and that a scheduling conference is likely to help shorten  
 22 and/or determine a better estimate of trial days required.

13. **The names, addresses, and telephone numbers of all trial counsel**

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14. **The dates on which the trial counsel may have complications to be considered in setting a trial date**

Counsel for STL: Unavailable due to pre-set trials/arbitrations as follows: March 1, 2025 – March 15, 2025; May 7, 2025 – May 25, 2025; June 29, 2025 – July 5, 2025.

Counsel for Hartford Life: Unavailable the following dates in 2025 due to preset trials: February 24 – March 17, 2025; April 15, 2025.

Counsel for TriNet: Unavailable the following dates in 2025 due to pre-set trials: January 13, 2025 – January 30, 2025; February 10, 2025 – February 28, 2025.

15. **Has all defendant(s) or respondent(s) been served**

All Defendants have been served. In addition and in compliance with 29 U.S.C. § 1132(h), a copy of the complaint was served to potential intervenors Acting Secretary of Labor and the Secretary of the Treasury via certified mail.

16. **Whether any party wishes a scheduling conference before the Court enters a scheduling order in the case**

Plaintiff requests a scheduling conference to address the multiple disputes already presented for purposes of Fed. R. Civ. P. 16(a).

17. **List the date(s) that each and every nongovernmental corporate party filed its disclosure statement pursuant to Fed. R. Civ. P. 7.1 and Local Rule 7.1**

Defendant STL: October 5, 2023 at ECF 6.

Defendant Hartford Life: October 10, 2023 at ECF 8.

Defendant TriNet HR XI, Inc.: January 11, 2024 at ECF 24.

DATED this 6th day of May, 2024.

Respectfully submitted,

By: /s/ Brad Erhart

Brad Erhart

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**Proposed Case Schedule**

<b>Case Event</b>	<b>Event Date</b>
Deadline for joining additional parties	Jul 15, 2024
Deadline for filing amended pleadings	Jul 29, 2024
Disclosure of expert testimony under FRCP 26(a)(2) due	Feb 1, 2025
Disclosure of rebuttal expert testimony under FRCP 26(a)(2)	Mar 1, 2025
All motions related to discovery must be filed by	Mar 1, 2025
Discovery must be completed by	Apr 1, 2025
Attorney Settlement Conference	May 1, 2025
All dispositive motions and motions challenging expert witness testimony must be filed by this date (see LCR 7(d)). Such motions must be noted for consideration no later than the fourth Friday thereafter (see LCR 7(d)).	May 1, 2025
All motions in limine must be filed by	Jul 28, 2025
Proposed jury instructions and agreed LCR 16.1 Pretrial Order due, including exhibit list with completed authenticity, admissibility, and objections fields	Aug 8, 2025
Trial briefs, proposed voir dire questions, and deposition designations due	Aug 11, 2025
Pretrial conference scheduled for	Aug 19, 2025 10:00 AM
JURY TRIAL SET FOR	Sep 1, 2025 9:00 AM